

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	
	)	
Interconnection between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio	)	
Service Providers	)	<b>DOCKET FILE COPY ORIGINAL</b>
	)	
Area Code Relief Plan for Dallas and	)	
Houston, Ordered by the Public Utility	)	NSD File No. 96-8
Commission of Texas	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan	)	
	)	
Proposed 708 Relief Plan and 630	)	
Numbering Plan Area Code by Ameritech-	)	IAD File No. 94-102
Illinois	)	

**MFS COMMUNICATIONS COMPANY, INC.  
MOTION TO DISMISS SOUTHWESTERN BELL'S  
PETITION FOR RECONSIDERATION  
OF SECOND REPORT AND ORDER, AND OPPOSITION  
TO MOTION TO ACCEPT LATE-FILED PLEADING**

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby moves to dismiss the Petition for Reconsideration of the *Second Report and Order* in the above-captioned dockets, FCC 96-333, released August 8, 1996, filed by Southwestern Bell Telephone Company ("SWBT") on October 8, 1996; and opposes SWBT's Motion for Late-Filed Pleading, also filed on October 8. As SWBT acknowledges in its Motion, the due date for petitions for reconsideration was October 7.

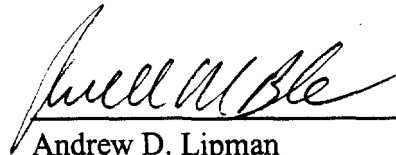
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SWBT argues in its Motion for Late-Filed Pleading that its late filing was beyond its control due to a mishap involving its courier service. It further alleges that the "Commission has the authority, under 47 C.F.R. 1.3, to suspend and waive its rules and accept this filing."

SWBT's argument in this docket is diametrically opposed to the argument that it made in CC Docket No. 91-141 when a similar situation arose concerning a petition for reconsideration that MFS filed one day late. At that time, SWBT argued that the Commission had no authority to waive the statutory deadline established by 47 USC § 405(a) for filing of petitions for reconsideration, and that "accepting the MFS Petition would violate the Commission's own rules and its statutory authority."<sup>1</sup>

SWBT should not be heard to argue out of both sides of its mouth on the same issue. Its Petition for Reconsideration is untimely and should be dismissed.

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<sup>1</sup> Opposition and Motion to Dismiss MFS Communications Company, Inc.'s Petition for Partial Reconsideration, filed in CC Docket No. 91-141, November 3, 1994. A copy of this document is attached as Exhibit A hereto.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Expanded Interconnection with ) CC Docket No. 91-141  
Local Telephone Company Facilities )  
 )

**OPPOSITION AND MOTION TO DISMISS  
MFS COMMUNICATIONS COMPANY, INC.'S  
PETITION FOR PARTIAL RECONSIDERATION**

Southwestern Bell Telephone Company, by its attorneys, respectfully files this Opposition and Motion to Dismiss an untimely Petition for Partial Reconsideration (Petition) filed on September 1, 1994 by MFS Communications Company, Inc. (MFS) in the captioned proceeding.

MFS' Petition seeks reconsideration of the Commission's July 25, 1994 Memorandum Opinion and Order, FCC 94-190, a summary of which was published in the Federal Register on August 1, 1994 (59 Fed. Reg. 38922). Commission Rule 1.429(d), 47 C.F.R. § 1.429(d), requires that petitions for reconsideration in rulemaking proceedings such as this must be filed within 30 days from the date of public notice of the Commission action. Furthermore, Section 405 of the Communications Act, 47 U.S.C. § 405(a), expressly makes this filing period statutory. Thus, any petition seeking reconsideration of this FCC Order had to be filed no later than August 31, 1994, whereas the MFS Petition was not filed until September 1, 1994.

As recently as July of this year, the Common Carrier Bureau stated, in *Federation of American Health Systems*, 9 FCC Rcd

3303, 3304 (1994): "Except where the Commission fails to provide notice of its decision to parties as required by our rules, we lack authority to extend or waive the statutory 30-day filing period specified in Section 405." Here, as in that case, Petitioner "has not shown (or even argued) that the Commission failed to provide public notice" of its Order. In fact, the record reveals that MFS had actual notice of the Commission's Order well before August 31, since MFS on August 25, 1994 filed a Motion to Intervene in Pacific Bell's appeal of that Order in the D.C. Circuit (Case No. 94-1547) (copy attached). Thus, here, as in the American Health Systems case, the Commission must dismiss MFS' Petition "as an untimely petition for reconsideration." Id.

Finally, the Commission should not utilize its occasional approach of accepting MFS' untimely filing as "informal comments". The Commission's Order has already been released. The only possible purpose for the MFS filing would be as a petition for reconsideration, which is clearly out of time by statute. Thus, accepting the MFS Petition would violate the Commission's own rules and its statutory authority.

If the Commission decides to accept the MFS Petition for any purpose despite the clear law forbidding such action, to comply with fundamental requirements of the Administrative Procedures Act,

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Citing Association of College and University Telecommunications Administrators, et al., 8 FCC Rcd 1781 (1992); Virgin Islands Telephone Corporation, 7 FCC Rcd 4238 (1992), remanded on other grounds, 989 F.2d 1231 (D.C. Cir. 1993); and Richardson Independent School District, 5 FCC Rcd 3135 (1990), vacated and remanded on other grounds sub nom. WLOS TV, Inc. v. FCC, 932 F2d 993 (D.C. Cir. 1991).

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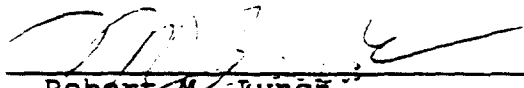
interested parties must thereafter be given a full opportunity to respond to the substantive points made in the Petition.

The MFS Petition is statutorily out of time and must be dismissed.

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November 3, 1994

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of November 1996 copies of MFS Communications Company, Inc.'s Motion To Dismiss Southwestern Bell's Petition For Reconsideration of Second Report and Order, and Opposition To Motion To Accept Late-Filed Pleading were served on the attached service list by first class mail, postage prepaid.

  
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